slippery and that there was no other support or any form of safety device to prevent him from falling. Yet he had chosen to continue to work on it although he could have refused to work if he had wanted to, or taken any measures to ensure that it was safe for him to continue with his job. He did nothing to minimise these risks and neither did he draw the defendant's attention to these existing perils. Instead of proceeding cautiously, which he could have done by keeping his hands and legs on and crawling along the reclining step ladder, he had chosen to stand up. He must have been aware for some time then that the step ladder was slippery as he started work at 8 a.m. and the mishap occurred at 9 a.m. I am unable to accept that during the one hour or so when he was working, he was not aware of the condition of the step ladder. I therefore hold that the plaintiff was liable for 40% contributory negligence .

I award special damages as agreed between the parties at $27,365. For pain and suffering and loss of amenities I allow the agreed sum of $70,000. As for the loss of future earnings the plaintiff was 30 years old at the time of the accident. Although he has lost the use of both his legs, he had regained complete mobility of his upper limbs after treatment. He was by profession a skilled carpenter before the accident and as such could still rely on his skilful hands for limited future earnings by doing wood-crafts such as wooden stools, bread boards and other small utility items and furniture. I would assess his capacity to earn in future to be reduced to about 20% of his former earnings, which the parties appear to have impliedly agreed at $300 per month. The total loss of future earnings in this case therefore will be $300 minus $60, i.e. $240 per month, which, when calculated by 20 years multiplier — a factor I deem fair — will give a resulting award of $35,891.16. For the purpose of this claim, I shall round off the amount to $35,895. The total awards to the plaintiff, assessed at 100% liability, add up to $133,260. I have assessed his contributory negligence at 40%. He will, therefore, be able to recover 60% of the total award, which will work out to $79,956. In addition, the plaintiff is allowed interest and costs at the usual rates.

Order accordingly.

Solicitors: *Vohrah & Tan Chee Lan; Syarikat Richard Ho.*

SHAMSIAH BINTI IBRAHIM v. ATTORNEY-GENERAL & ORS.

[O.C.J. (Yusoff Mohamed J.) June 9 ,1980]

[Johore Bahru — Petition for Admission No. 34 of 1979]

Legal Profession — Admission as Advocate and Solicitor — Objection by Bar Council and Bar Committee — Notice of objection not served on petitioner — Petitioner receiving remuneration for paid leave during period of pupillage — No special leave required — Legal Profession Act, 1976, ss. 12, 14, 15 & 16.

In this case the Bar Council and the Johore Bar Committee objected against the admission of the petitioner on the ground that during her period of pupillage the petitioner was an employee of the State Development Corporation and received remuneration for paid leave while doing her pupillage. No notice of objection was served as required three clear days before the date of the hearing of the application.

Held: (1) the objection must be overruled as notice of objection had not been served as required under section 16(2) of the Legal Profession Act, 1976, three clear days before the date of the hearing of the application;

(2) in the circumstances of the case where the petitioner had been given paid leave from her employment, no special leave of the Bar Council was required.

PETITION FOR ADMISSION.

Arthur Lee for the petitioner.

Abas Ismail Rowland for the Attorney-General.

S. Balarajah for the Bar Council and the Johore Bar Committee.

Cur. Adv. Vult.

Yusoff Mohamed J.: An objection was taken by the Bar Council and the Johore Bar Committee against the admission of the petitioner by reason that section 12(3) of the Legal Professions Act (Act 166) has not been complied with.

Section 12(3) of the Act provides:

"No qualified person shall, without the special leave in writing of the Bar Council, hold any office or engage in any employment of any kind, whether full-time or otherwise, during the period of pupillage, but nothing in this subsection shall preclude a pupil from receiving remuneration from his master."

It was contended by the Bar Council and the Bar Committee that the petitioner during her period of pupillage has held office or engaged as an employee of the State Development Corporation, in that she was receiving remuneration (paid leave) while doing her pupillage.

I overruled this objection for the following reasons:

(1) That the notice of objection as required under section 16(2) has not been served on the petitioner nor a copy of it filed in the Registrar's Office at the Court, 3 clear days before the date of hearing of the application. In my view this provision of the Act is mandatory having regard to subsection (3) of section 16 which in effect provides that upon a notice of objection having been filed, the court of a single judge would have no jurisdiction to entertain the application.

It is also my view that section 16 of the Act does not envisage an objection to be taken at the hearing on the present ground against the petitioner in view of the fact that a period of not less than 10 days was required by section 16(1) for copies of the petition and other documents exhibited to be served on the Bar Council, the Bar Committee and the Attorney-General before the petition was heard, and the fact that by that provision the Bar Council would have had sufficient time and opportunity to file the notice of objection as prescribed by the section.

(2) The reason given by the Bar Council on the matter objected upon in that, the petitioner receiving paid leave while doing pupillage was discovered only on the day before the petition was heard is to my mind flimsy, in view of section 16 stated above and also the duty required of the Bar Council and the Bar Committee to make full enquiries upon the petitioner 3 months before her admission (sections 14 and 15 of the Act) and during which time this matter would have been revealed. If the inquiries have been made it

would have come to light that she was receiving remuneration. In my view the reason advanced has no merit.

(3) Section 12(3) prohibits the holding of any office or engaging in any employment during the period of pupillage without special leave from the Bar Council. It would seem that merely the receipt of remuneration during this period by pupils was not prohibited by the section and in fact the section does not preclude remuneration received from his master. The law seems to be silent whether special leave would also be necessary where remunerations were received from other sources than the master as opposed to holding an office or engaging in an employment during the period of pupillage. In my opinion special leave was not necessary where remuneration only was received by the pupil without physically involving himself in employment other than his pupillage. The provision is necessary because during pupillage the pupil was required to devote full attention to the laws or to the subject he was studying and to ensure that there was no conflict of interest with his master's. But to preclude a pupil from receiving remuneration entirely, would deprive him of subsistence during the period of pupillage which may last over 12 months. And this in my opinion, is not the intention of the legislature.

(4) There have been precedents as brought to my attention by the representative of the Attorney-General that numerous police officers and customs officers were receiving paid leave during pupillage and there has been no previous objection from the Bar Council or the Bar Committee on their admission. Basing on this, the Attorney-General offered no objection to the present petition which I think was the correct attitude.

In the event I held that special leave would not be necessary in the circumstances of this case.

It is to be noted that the Bar Council whose special leave was required by law to be obtained in cases of this nature, and its authority allegedly infringed, does not pursue this appeal, but the Johore Bar Committee for its own reason does.

Order accordingly.

HARI RAM SEGHAL v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Yahya J.) October 14, 1980]
[Malacca — Criminal Application No. 2 of 1980]

Criminal Law and Procedure — Revision — Disposal of outstanding appeals when records have become unobtainable — Revisionary powers of High Court — Application of English Procedure — Criminal Procedure Code (F.M.S. Cap. 6), ss. 5 & 323 — Courts of Judicature Act (Act 91), s. 31.

This was a motion seeking to move the court into exercising its revisionary powers to dispose of two outstanding appeals, the records of which have become unobtainable. On September 28 the applicant who was then a Chief Inspector of the Royal Malaysian Police was charged and jointly tried on two charges under Penal Code sections 352 and 323, respectively. At the conclusion of the hearing the trial Magistrate found the offences against him proved and in respect of the first one, he bound over the application under section 173A(ii)(b) of the Criminal Procedure Code without recording a conviction in the sum of $200 with one surety to be of good behaviour for 6 months and in respect of the second one, he convicted and fined the applicant $500, in default 3 months' imprisonment. Subsequently appeals were filed in respect of both charges. Having performed all that was needed of him for the moment the applicant patiently waited for the delivery of the records of proceedings and the grounds of judgment but both remained undelivered. It appeared that the Magistrate who tried the case had taken possession of the entire records for the purpose of writing his grounds of judgment. When the Magistrate left Malacca to pursue his degree course, he took along the records of this case and several others with him to the campus and for reasons best known to him he had ignored or neglected to write the grounds of his decision or return the records of proceedings to the registry inspite of numerous demands by the court as well as higher authorities.

Held: (1) the powers of revision by a High Court, as contained in Part VII of the Criminal Procedure Code and under section 31 of the Courts of Judicature Act must be given a wider interpretation. The object of these provisions is to correct any miscarriage of justice arising not only from error in judgment and procedure but from neglect or indolence on the part of those in authority and resulting in undeserved hardship on any individual affected by such judgment, neglect or indolence;

(2) the powers of the courts in England to intervene and make rules not provided in the criminal procedure are inherent and are exercisable to correct any injustice. The power to make rules such as the Judges' Rules, notice of additional evidence and power to expunge words from records are some examples of this inherent power. By virtue of section 5 of the Criminal Procedure Code, the use of this power could be extended to this country provided it does not conflict with our statutory provisions;

(3) both the principles of justice and equity call for the court's intervention and the exercise of its inherent and statutory powers in this revision; the finding and the binding over order made under section 173A(ii)(b) of the Criminal Procedure Code by the Magistrate should be set aside and in lieu thereof the court would acquit and discharge the applicant on the first charge; Similarly the court quashed and discharged the application on the second charge and ordered that the fine, if paid, be refunded to him.

Per curiam: The court must resist the temptation and decline any invitation into playing the romantic role of the avenger and must concentrate itself instead on procuring justice and upholding the rule of law through our recognised machinery of justice. The persons appearing in our courts have the right to expect the best quality of justice and nothing less. Any mistake or flaw in that machinery, which may have the possibility of injustice, must be resolved in their favour.

Cases referred to:-

(1) *Connelly* v. *Director of Public Prosecutions* [1964] 2 All E.R. 401.

(2) *Director of Public Prosecutions* v. *Humphrys* [1976] 2 All E.R. 497.

(3) *R.* v. *Payne & Spillane* [1971] 3 All E.R. 1146.

CRIMINAL APPLICATION.

F.H. D'Cruz for the applicant/appellant.

Hassan bin Ibrahim (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wan Yahya J.: This is essentially a motion seeking to move the court into exercising its revisionary powers to dispose of two outstanding appeals, the records of which have become unobtainable.

The episode leading to this application is as follows: On September 28, 1976 the applicant, who was then a Chief Inspector attached to the Royal Malay-